

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

REVEREND JUSTIN BLEUER, BEREAN BIBLE CHURCH, NEW YORKERS FOR CONSTITUTIONAL FREEDOMS, REVEREND JASON J. MCGUIRE, ROBERT PARKER, CHERYL PARKER, LIGHTHOUSE WESLEYAN CHURCH, KELLY TODD, BETHEL CHAPEL, H. ED REED, CHRISTIAN BIBLE CHURCH, DR. WALT SCHLUNDT, COMMUNITY BIBLE CHURCH, VIRGINIA OGDEN, THE CHURCH OF THE GOOD SHEPHERD, STEVE LAMARCO, VICTOR COMMUNITY CHURCH, ANDREW LARSON, THE BAPTIST CHURCH OF NORTHVILLE, REVEREND VINCENT FUSCO, NEW JERUSALEM CITY CHURCH, KEITH HENRY, NEW LIFE ASSEMBLY OF GOD, FRANK DELUCCIO, BRIAN RATHBUN, LAKESHORE COMMUNITY CHURCH. SCOTT HARRIS, GRACE BIBLE CHURCH, NICHOLAS BUTHMAN, BIBLE BAPTIST CHURCH OF SODUS, RAYMOND RICHARDS, CALVARY ASSEMBLY OF GOD, BRETT POPP, CHRISTIAN CHURCH OF CHARLESTON FOUR CORNERS, TONY LABARCA, CROSSROADS CHURCH, SCOTT STROBEL, FIRST BIBLE BAPTIST CHURCH, JOHN WIVELL, INDEPENDENT BAPTIST CHURCH, ERIC HICE, CENTER STREET BAPTIST CHURCH, TIM LINDSAY, HARVEST CHRISTIAN FELLOWSHIP, ANDREW FIDURKO, MALLORY WESLEYAN CHURCH, JIM KROHN, SOUTHEAST BIBLE BAPTIST CHURCH, STEVE HARNESS, WILTON BAPTIST CHURCH, BARRY SMITH, DOOR TO HOPE CHURCH, MURRAY MUMAU, GENESEE COUNTRY CHURCH

PLAINTIFFS,

vs.

STEVEN A. NIGRELLI, IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF THE NEW YORK STATE POLICE, MICHAEL KORCHAK IN HIS CAPACITY AS THE DISTRICT ATTORNEY FOR THE COUNTY OF BROOME COUNTY, LORI PETTIT RIEMANN IN HER CAPACITY AS THE DISTRICT ATTORNEY FOR THE COUNTY OF CATTARAUGUS, MICHAEL FERRARESE IN HIS CAPACITY AS THE DISTRICT ATTORNEY FOR THE COUNTY OF CHENANGO, ANDREW J. WYLIE IN HIS CAPACITY AS THE DISTRICT ATTORNEY FOR THE COUNTY OF CLINTON, JACK STOLLSTEIMER IN HIS CAPACITY AS THE DISTRICT ATTORNEY FOR DELAWARE COUNTY, WILLIAM V. GRADY IN HIS CAPACITY AS THE DISTRICT ATTORNEY FOR THE COUNTY OF DUTCHESS, AMANDA NELLIS IN HER CAPACITY AS THE ACTING DISTRICT ATTORNEY FOR THE COUNTY OF FULTON, JEFFREY CARPENTER IN HIS CAPACITY AS THE DISTRICT ATTORNEY FOR THE

**PLAINTIFFS'
STATUS REPORT
RE PLEADINGS
AND SERVICE**

Case No. 3:22-cv-1037
(TJM/ML)

COUNTY OF HERKIMER, ERIC GONZALEZ IN HIS CAPACITY AS THE DISTRICT ATTORNEY FOR THE COUNTY OF KINGS, GREGORY J. McCAFFREY IN HIS CAPACITY AS THE DISTRICT ATTORNEY FOR THE COUNTY OF LIVINGSTON, SANDRA DOORLEY IN HER CAPACITY AS THE DISTRICT ATTORNEY FOR THE COUNTY OF MONROE, LORRAINE DIAMOND IN HER CAPACITY AS THE DISTRICT ATTORNEY FOR THE COUNTY OF MONTGOMERY, BRIAN D. SEAMAN IN HIS CAPACITY AS THE DISTRICT ATTORNEY FOR THE COUNTY OF NIAGARA, JAMES RITTS IN HIS CAPACITY AS THE DISTRICT ATTORNEY FOR THE COUNTY OF ONTARIO, JOSEPH V. CARDONE IN HIS CAPACITY AS THE DISTRICT ATTORNEY FOR THE COUNTY OF ORLEANS COUNTY, GREGORY S. OAKES IN HIS CAPACITY AS THE DISTRICT ATTORNEY FOR THE COUNTY OF OSWEGO, KAREN A. HEGGEN IN HER CAPACITY AS THE DISTRICT ATTORNEY FOR THE COUNTY OF SARATOGA, SUSAN J. MALLERY IN HER CAPACITY AS THE DISTRICT ATTORNEY FOR THE COUNTY OF SCHOHARIE, BROOKS BAKER IN HIS CAPACITY AS THE DISTRICT ATTORNEY FOR THE COUNTY OF STEUBEN, AND MICHAEL CALARCO IN HIS CAPACITY AS THE DISTRICT ATTORNEY FOR THE COUNTY OF WAYNE,

DEFENDANTS.

Plaintiffs, by their counsel Brenna Boyce PLLC, submit the following Status Report regarding the present state of pleadings and service in the above-captioned civil action as directed by Text Order of this Court issued November 15, 2022. Doc 66.

1. Plaintiffs filed a Complaint in this civil action on October 4, 2022. Doc 1.
2. Summons were then issued the next day for twenty-one defendants, with service as indicated in the chart below. Doc 2.

Def #	Defendant Name	Duty and New York Jurisdiction	Complaint Service Date	Affidavit of Service filed
# 1	AMANDA NELLIS	ACTING DISTRICT ATTORNEY FOR FULTON COUNTY	10/13/2022	11/03/2022
# 2	ANDREW J. WYLIE	DISTRICT ATTORNEY FOR CLINTON COUNTY	10/11/2022	11/03/2022
# 3	BRIAN D. SEAMAN	DISTRICT ATTORNEY FOR NIAGARA COUNTY	10/19/2022	11/03/2022

# 4	BROOKS BAKER	DISTRICT ATTORNEY FOR STEUBEN COUNTY	10/11/2022	11/03/2022
# 5	ERIC GONZALEZ	DISTRICT ATTORNEY FOR KINGS COUNTY	10/11/2022	11/03/2022
# 6	GREGORY J. McCAFFREY	DISTRICT ATTORNEY FOR LIVINGSTON COUNTY	10/17/2022	11/03/2022
# 7	GREGORY S. OAKES	DISTRICT ATTORNEY FOR OSWEGO COUNTY	10/21/2022	11/03/2022
# 8	JACK STOLLSTEIMER; INSTEAD JOHN L. HUBBARD	DISTRICT ATTORNEY FOR DELAWARE COUNTY	10/11/2022	11/03/2022
# 9	JAMES RITTS	DISTRICT ATTORNEY FOR ONTARIO COUNTY	10/15/2022	11/03/2022
# 10	JEFFREY CARPENTER	DISTRICT ATTORNEY FOR HERKIMER COUNTY	11/3/2022	11/17/2022
# 11	JOSEPH V. CARDONE	DISTRICT ATTORNEY FOR ORLEANS COUNTY	10/12/2022	11/03/2022
# 12	KAREN A. HEGGEN	DISTRICT ATTORNEY FOR SARATOGA COUNTY	10/18/2022	11/17/2022
# 13	FORMERLY KEVIN P. BRUEN, NOW STEVEN A. NIGRELLI	SUPERINTENDENT OF THE NEW YORK STATE POLICE	10/13/2022	11/03/2022
# 14	LORI PETTIT RIEMANN	DISTRICT ATTORNEY FOR CATTARAUGUS COUNTY	10/13/2022	11/03/2022
# 15	LORRAINE DIAMOND	DISTRICT ATTORNEY FOR MONTGOMERY COUNTY	10/18/2022	11/03/2022
# 16	MICHAEL CALARCO	DISTRICT ATTORNEY FOR WAYNE COUNTY	10/11/2022	11/03/2022
# 17	MICHAEL FERRARESE	DISTRICT ATTORNEY FOR CHENANGO COUNTY	10/21/2022	11/17/2022
# 18	MICHAEL KORCHAK	DISTRICT ATTORNEY FOR BROOME COUNTY	11/17/2022	11/18/2022
# 19	SANDRA DOORLEY	DISTRICT ATTORNEY FOR MONROE COUNTY	10/28/2022	11/03/2022
# 20	SUSAN J. MALLERY	DISTRICT ATTORNEY FOR SCHOHARIE COUNTY	10/13/2022	11/03/2022
# 21	WILLIAM V. GRADY	DISTRICT ATTORNEY FOR DUTCHESS COUNTY	10/11/2022	11/03/2022

3. Plaintiffs have not received an answer or other responsive papers, nor received a request for an extension of time to respond to the Complaint, from the following defendants: AMANDA NELLIS; BROOKS BAKER; GREGORY J. McCAFFREY; and SUSAN J. MALLERY.

4. Under the Federal Rules of Civil Procedure, answers are due to the amended complaint within twenty-one days following its service, unless otherwise extended by the Court or counsel. FRCP Rule 12 [a][1].

5. As a result, those four defendants who have been served a summons and Complaint but who have not answered nor received an extension of time to answer the Complaint had their answers due as follows: AMANDA NELLIS, November 3, 2022; BROOKS BAKER, November 1, 2022; GREGORY J. MCCAFFREY, November 7, 2022; and SUSAN J. MALLERY, November 3, 2022.

6. Plaintiffs subsequently filed an Amended Complaint in this action on November 3, 2022. Doc 42. Note that the plaintiffs' caption of the Amended Complaint was inadvertently revised when filed. *Cf.* Doc 1. Corrective action will be taken if needed upon direction from the Court. *See* ¶¶ 14, 15 below. *See also* FRCP 1.

7. Because Plaintiffs filed an Amended Complaint on November 3, 2022, those defendants who had not responded to service of the Complaint but whose time to answer had not yet expired were granted a new twenty-one-day period to respond to the Amended Complaint. Those defendants were AMANDA NELLIS, GREGORY J. MCCAFFREY, and SUSAN J. MALLERY.

8. However, BROOKS BAKER, whose time to respond expired before the Amended Complaint was filed, is believed to be in default.

9. As is evident from the chart, proof of service has not been filed within five days of service until recently as provided by NDNY General Order No. 25. Doc 3. In seeking to litigate this civil action in an efficient manner consistent with FRCP Rule 1, Plaintiffs' counsel intended to batch all the proofs of service and file them all together once received, overlooking the near-contemporaneous filing directive of NDNY General Order No. 25. Although no prejudice to any party from the oversight is discerned, Plaintiffs look to the Court for direction of any needed corrective action. *See* FRCP Rule 4 [1][3] (failure to prove service does not affect the validity of service); Rule 6 [b][1][b] (the court may, for good cause, extend the time to perform acts on motion made after the time has expired if the party failed to act because of excusable neglect); Rule 1.

10. Plaintiffs have served the Amended Complaint in this litigation upon the following defendants, who have answered, moved to dismiss, or sought/obtained an extension of time to respond as indicated in the chart below:

Def #	Defendant Name	Duty and Jurisdiction	Answered	Obtained extension till
# 2	ANDREW J. WYLIE	DISTRICT ATTORNEY FOR CLINTON COUNTY	Answer,	
			11/17/2022	
# 3	BRIAN D. SEAMAN	DISTRICT ATTORNEY FOR NIAGARA COUNTY		12/2/2022
# 5	ERIC GONZALEZ	DISTRICT ATTORNEY FOR KINGS COUNTY		12/2/2022

# 6	GREGORY J. McCAFFREY	DISTRICT ATTORNEY FOR LIVINGSTON COUNTY	12/9/2022
# 7	GREGORY S. OAKES	DISTRICT ATTORNEY FOR OSWEGO COUNTY	12/2/2022
# 8	JACK STOLLSTEIMER; INSTEAD JOHN L. HUBBARD	DISTRICT ATTORNEY FOR DELAWARE COUNTY	Answer, 11/16/2022
# 9	JAMES RITTS	DISTRICT ATTORNEY FOR ONTARIO COUNTY	Answer, 11/16/2022
# 10	JEFFREY CARPENTER	DISTRICT ATTORNEY FOR HERKIMER COUNTY	12/2/2022
# 11	JOSEPH V. CARDONE	DISTRICT ATTORNEY FOR ORLEANS COUNTY	12/2/2022
# 12	KAREN A. HEGGEN	DISTRICT ATTORNEY FOR SARATOGA COUNTY	11/4/2022 (Answer to original Complaint) 11/28/2022
# 13	FORMERLY KEVIN P. BRUEN, NOW STEVEN A. NIGRELLI	SUPERINTENDENT OF THE NEW YORK STATE POLICE	12/2/2022
# 14	LORI PETTIT	DISTRICT ATTORNEY FOR CATTARAUGUS COUNTY	12/2/2022
# 15	LORRAINE DIAMOND	DISTRICT ATTORNEY FOR MONTGOMERY COUNTY	12/2/2022
# 16	MICHAEL CALARCO	DISTRICT ATTORNEY FOR WAYNE COUNTY	12/2/2022
# 17	MICHAEL FERRARESE	DISTRICT ATTORNEY FOR CHENANGO COUNTY	12/2/2022
# 18	MICHAEL KORCHAK	DISTRICT ATTORNEY FOR BROOME COUNTY	12/8/2022
# 19	SANDRA DOORLEY	DISTRICT ATTORNEY FOR MONROE COUNTY	Answer, 11/16/2022
# 21	WILLIAM V. GRADY	DISTRICT ATTORNEY FOR DUTCHESS COUNTY	12/2/2022

11. As a result of Plaintiffs' filing of their Amended Complaint on November 3, 2022, all defendants for whom counsel have registered in the CM/ECF system were served pursuant to General Order No. 22. The five defendants for whom no notice of appearance has been electronically filed at this time are MICHAEL KORCHAK, AMANDA NELLIS, GREGORY J.

MCCAFFREY, SUSAN J. MALLERY, and BROOKS BAKER. In an effort to provide the Court with an updated status for each defendant, Plaintiffs' counsel has had the following contacts with these defendants:

- a. MICHAEL KORCHAK was served with the Summons, Complaint, and Amended Complaint yesterday, November 17, 2022, after the original process server provided an affidavit of nonservice to Plaintiffs' counsel's office. There have been no further discussions with this defendant at this time.
- b. AMANDA NELLIS returned a call from Plaintiffs' counsel by her attorney, Jason Brott, Esq., who indicated that AMANDA NELLIS takes no position on this matter.
- c. GREGORY MCCAFFERY returned a call from Plaintiffs' counsel by his attorney, John Lockhart, Esq., who agreed to accept service of the amended complaint via email. Service by email was then effectuated on November 17, 2022. Defendant GREGORY MCCAFFERY must now answer the Amended Complaint by December 9, 2022.
- d. SUSAN J. MALLERY returned a call from Plaintiff's counsel and indicated an intent to file a notice of appearance but was experiencing technical difficulties. Ms. Mallery has provided a notice of appearance to Plaintiffs' counsel via email dated November 18, 2022 and indicated that the original is in the mail. A copy of Ms. Mallery's notice with letter and attachments is appended to this Status Report.
- e. BROOKS BAKER has not returned calls from Plaintiffs' counsel as of this filing.

12. In an effort to process the entire civil action and Amended Complaint against all defendants in one coherent and concurrent manner, Plaintiffs have undertaken to serve the Amended Complaint upon the three defendants who have not yet acknowledged the same (AMANDA NELLIS, SUSAN J. MALLERY, BROOKS BAKER) using traditional means with physical copies of the Amended Complaint. Such service should be accomplished next week.

13. Some new information warrants some housekeeping matters and direction from the Court.

14. Plaintiffs have learned that they have inadvertently named Jack Stollsteimer as District Attorney for Delaware County in this civil action, when John L. Hubbard is, in fact, the District Attorney for Delaware County, New York. Mr. Stollsteimer is the District Attorney for Delaware County, Pennsylvania. Mr. Hubbard has answered the summons and Complaint delivered to his official offices in Delhi, New York, though raising objections to this Court's jurisdiction based on the fact that Mr. Hubbard was not specifically named in our civil action nor

specifically served. Doc 75. Subsequent discussion with Mr. Hubbard's counsel Frank W. Miller, Esq. has resulted in agreement that the case caption of Plaintiffs' civil action should be revised to name defendant John L. Hubbard as District Attorney for Delaware County instead of Jack Stollsteimer, and also substitute Mr. Hubbard for Mr. Stollsteimer in ¶ 39 of the Amended Complaint. Such changes are jointly requested by Plaintiffs' counsel and Mr. Hubbard's counsel to correct the pleading and remove the issue of proper service from the litigation.

15. Note that the general caption to the filed Amended Complaint should be revised to account for several modifications recognized to date: (1) to re-establish the Rev. Justin Bleuer as lead plaintiff; (2) to substitute John L. Hubbard as District Attorney for Delaware County instead of Jack Stollsteimer (in the caption and ¶ 39 of the Amended Complaint); and (3) spell Michael Calarco correctly. Accordingly, a proposed corrected caption to the Amended Complaint is set forth below and proposed for all use going forward, with the shorthand form of *Bleuer, et al. v. Nigrelli, et al.*, as the Court directs.

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NORTHERN DISTRICT OF NEW YORK**

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DEFENDANTS.

Dated: November 18, 2022

Respectfully submitted,

/s/ David C. Sieling

David C. Sieling

Sheldon W. Boyce, Jr.

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Service upon all counsel via CM/ECF, excepting that Michael Korchak, Amanda Nellis, Gregory J. McCaffrey, Susan J. Mallery, and Brooks Baker have been served by email.